

JUN 5 1947

CHARLES ELMORE GROPLEY
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1946

No. 1226

TEXASTEEL MANU-
FACTURING CO.,
ET AL.,

Petitioners,

vs.

SEABOARD SURETY
COMPANY,

Respondent.

No. 1227

GEO. W. ARMSTRONG,
SR., ET AL,

Petitioners,

vs.

SEABOARD SURETY
COMPANY,

Respondent.

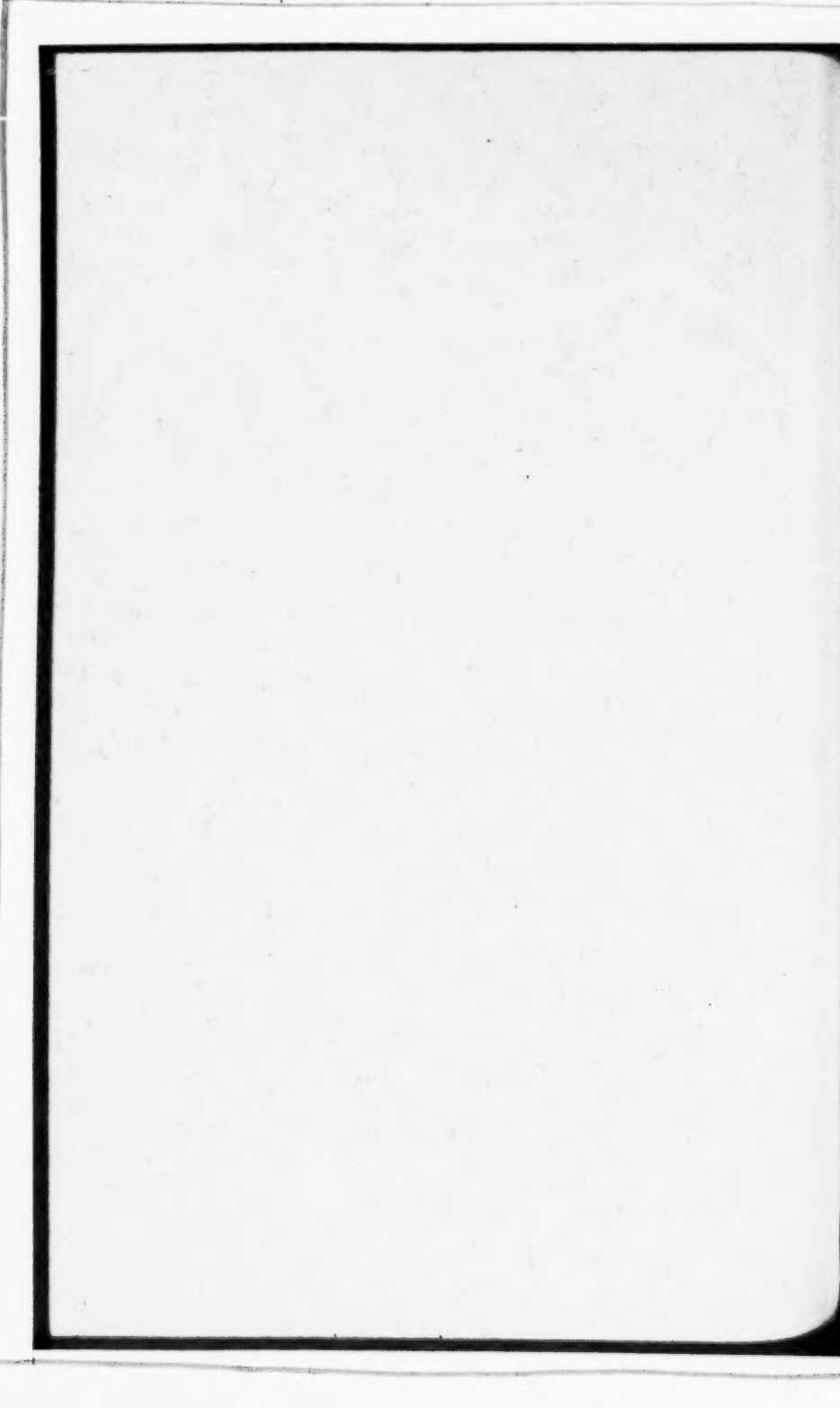
PETITIONERS' MOTION FOR REHEARING IN BOTH OF THE ABOVE STYLED AND NUMBERED APPLICATIONS, IN CAUSE NO. 11,499, SAME STYLE, LATELY PENDING IN THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND IN CAUSE NO. 11,603, SAME STYLE, LATELY PENDING IN SAID CIRCUIT COURT OF APPEALS AND CONSOLIDATED IN THAT COURT.

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Of Counsel



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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now come Texasteel Manufacturing Company, a Texas corporation, George W. Armstrong Sr., Allen J. Armstrong, George W. Armstrong Jr., and Mary C. Armstrong, petitioners in Cause No. 1226, and said individuals above named being petitioners in Cause No. 1127, and respectfully present this their Petition

for Rehearing in both of said causes, which were consolidated in the Circuit Court of Appeals for the Fifth Circuit, and for grounds for this Petition said petitioners would respectfully show:

I.

The Circuit Court of Appeals erred in holding that the District Court in the exercise of its general jurisdiction, and not sitting as a bankruptcy court, had jurisdiction to entertain this suit against the corporate petitioners for an adjudication of the liability of said corporation on the notes described in respondent's petition, and such jurisdiction to decree said corporate petitioner liable for principal, interest and attorney fees of said note; said corporation, at said time, being involved in certain reorganization proceedings pending in the bankruptcy court for the same District, without the consent of said bankruptcy court.

BRIEF OF ARGUMENT

Petitioners respectfully refer this Honorable Court to paragraph numbered 2, page 22, of the Petition in cause No. 1226.

II.

The Circuit Court of Appeals erred in holding that the District Court had jurisdiction to render judgment decreeing the liability of the corporate petitioner upon certain notes described in respondent's petition when said corporation was involved in reorganization proceedings then pending in the Bankruptcy Court with-

out pleading or proof that said claim had been filed in such reorganization proceedings within six months.

BRIEF OF ARGUMENT

Petitioners respectfully refer this Honorable Court to paragraph numbered 1, pages 20, 21 and 22, of the Petition in cause No. 1226.

III.

The Circuit Court of Appeals erred in holding that the District Court had jurisdiction to render a declaratory judgment declaring that the respondent was not liable to said corporate petitioner on its claim that respondents had by fraud and duress taken over the management and the performance of certain contracts between corporate petitioner and the Naval Bureau, when said corporate petitioner was involved in certain bankruptcy proceedings then pending in the same district without the consent of the Bankruptcy Court.

BRIEF OF ARGUMENT

Petitioners respectfully refer this Court to paragraph numbered 3, pages 22 to 27, inclusive, of Petition in cause No. 1226, and in this connection would respectfully show that on June 5, 1942, when the representative of respondent demanded the removal of petitioners, George W. and Allen J. Armstrong,

and John Foster from any part in the corporate management of said corporation (R. 220, 221, 222, 223, 226-27 and 303-4), that the said contracts in question were not in default, but performance of such contracts had been extended by written contracts to October 1942 (see Appendix D, pages 40-42 of said Petition in cause No. 1226). Said contracts not being in default, no right accrued to respondent to demand the removal of said individuals under the escrow agreement, which only provided for such removal to prevent a declaration of a default. Said escrow agreement did not authorize the arbitrary action by respondent. See cases cited at pages 23 and 24, Petition in cause No. 1226. 17 *C. J. S.*, Sec. 397, p. 887; 54 *Am. Jur.*, p. 581, Sec. 68.

IV.

The Circuit Court of Appeals erred in holding that the allegation of respondent's complaint, in the District Court, made an appropriate case for a declaratory judgment, and in affirming said judgment, when the record showed that the only grounds alleged by respondent for such judgment, was that it was necessary that it be advised as to the validity of certain trustee's certificates in said reorganization proceedings which it had purchased in order that it might determine whether it should further finance the operation of the Port Arthur plant. The records show that since said trial the contract between the Navy and corporate petitioner had been performed or cancelled, and respondent relieved of all liability on the bonds of said corporate petitioner, and that said trus-

tee's certificates had been paid or refinanced, and that respondent had no further connection with said officer or said reorganization proceedings, and the facts relating to liability or non-liability of petitioners on said note has already transpired, and the facts as to respondent's liability, for the operation of said plant, had already transpired and there was nothing in the evidence showing an existing or imminent invasion of respondent's rights by petitioners which would result in injury to it.

BRIEF OF ARGUMENT

The Court is respectfully referred to the Brief of Argument at pages 56, 57 and 58 of said Petition hereinabove referred to.

V.

The Circuit Court of Appeals erred in holding that the burden of proof was on petitioners to prove either fraud, duress or mismanagement, by respondent, because the burden of proof was on respondent, who sought a declaratory judgment against petitioners decreeing that it had not been guilty of any fraud, duress or coercion, and that it was not responsible for mismanagement of the operation of the Port Arthur plant, and it had not mismanaged said operation.

BRIEF OF ARGUMENT

The Court is respectfully referred to the cases cited at the bottom of page 24 and on page 25 of the Petition above referred to in support of the above assignment.

VI.

The Circuit Court of Appeals erred in holding that the evidence was insufficient to raise an issue either of fraud or duress or mismanagement by respondent in the operation of the Port Arthur plant.

BRIEF OF ARGUMENT

The Court is respectfully referred to pages 12, 13, 14 and 15, and pages 22 to 27, inclusive, of said petition hereinabove referred to.

VII.

The Circuit Court of Appeals erred in affirming said declaratory judgment based on instructed verdict, and in holding that petitioners wholly failed to prove fraud by respondent, because the burden was on respondent to prove the allegations of its petition for declaratory judgment, and the evidence in the case raised the issue of fraudulent representations on the part of respondent's agent O'Neal, and that petitioners were induced thereby to surrender the control of said Port Arthur plant operation to a management committee.

BRIEF OF ARGUMENT

The Court is respectfully referred to the pages of the Petition last hereinabove referred to under the preceding assignment as supporting Assignment No. VII.

VIII.

The Circuit Court of Appeals erred in affirming the declaratory judgment based on an instructed verdict, and in holding that petitioners had failed to prove duress in the appointment of a management committee because the evidence showed that respondent's agent presented the petitioners a letter from the Navy demanding the removal of certain of the petitioners from any part of the management of the affairs of the corporate petitioners with a threat, that if they persisted in such refusal that respondent would have no recourse but to proceed under its powers in certain escrow agreements of March 1942 and remove said petitioners from control of the affairs of said corporation and that said individual petitioners accepted the alternative of a management committee, rather than be ousted from control of said corporation; that said demand was unlawful, in that said contract was not in default, and petitioners were in no way responsible for the delay in the execution thereof.

BRIEF OF ARGUMENT

The Court is respectfully referred to the pages of said Petition referred to under Assignment VI above as supporting this assignment.

IX.

The Circuit Court of Appeals erred in holding that petitioners failed to prove any case for recovery against respondent because the evidence showed that after the appointment of the management committee that the operations at Port Arthur were dominated and controlled by respondent's agents and that the plant was operated in a negligent, inefficient manner, and that if it had not been so operated, losses of approximately over a million dollars would have been avoided.

BRIEF OF ARGUMENT

The Court is respectfully referred to pages 15 to 20, inclusive, and the pages referred to under Assignment VI hereof in support of the foregoing assignment.

X.

The Circuit Court of Appeals erred in affirming the judgment of the District Court, because there was no evidence authorizing an instructed verdict in favor of respondent on the issue of estoppel and ratification, in that the evidence showed that respondent's power under said escrow agreement of March 1942 continued

through the period of operation of said Port Arthur plant, and, therefore, the duress continued for the same period and further because there was no evidence showing a ratification or estoppel.

BRIEF OF ARGUMENT

This Honorable Court is respectfully referred to page 26 of said Petition above referred to in support of this assignment.

XI.

The Circuit Court of Appeals erred in holding that the rendition of monetary judgment awarding execution against petitioner for the amount of the principal, interest and attorney fees of said notes sued on and said judgment being wholly based on the declaratory judgment and entered while an appeal from said declaratory judgment was pending was not in error.

BRIEF OF ARGUMENT

The Court is respectfully referred to pages 7, 8, 9 and 10 of the Petition in cause No. 1227.

XII.

The Circuit Court of Appeals erred in affirming the judgment of the trial court entered after the rendition of the declaratory judgment and in the same case while an appeal from said declaratory judgment was then pending.

BRIEF OF ARGUMENT

The Court is respectfully referred to pages 7 to 10, inclusive, of said Petition in cause No. 1227.

XIII.

The trial court was without jurisdiction to proceed further in the case in which said declaratory judgment was rendered while an appeal from said declaratory judgment was pending.

BRIEF OF ARGUMENT

The Court is respectfully referred to pages 7 to 10, inclusive, of said Petition in cause No. 1227.

XIV.

The Circuit Court of Appeals erred in holding that petitioners were primarily liable on the notes for which judgment was rendered against them, and that it was not error for the trial court to render judgment against petitioners for the full amount of said notes without having previously, or at the same time, rendered judgment against Texasteel Manufacturing Company, the principal debtor, without either allegation or proof that said corporation was insolvent, or beyond the jurisdiction of the court.

BRIEF OF ARGUMENT

The Court is respectfully referred to pages 11, 12 and 13 of said above-mentioned Petition in support of this Assignment.

XV.

The Circuit Court of Appeals erred in affirming the judgment of the trial court against the petitioners on the obligation sued on, pending the proceedings for reorganization of Texasteel Manufacturing Company in which said corporation was involved; said proceedings being filed by respondent, without exhausting the assets of the principal debtor before rendering judgment against petitioners.

BRIEF OF ARGUMENT

The Court is respectfully referred to pages 53 to 56, inclusive, of supporting brief to Petition in cause No. 1226.

WHEREFORE, petitioners respectfully pray that a rehearing be granted to them by this Honorable Court in each of the causes hereinabove styled and numbered, to the end that the judgment in each of said causes may be reversed and remanded to the

United States District Court for the Northern District of Texas for further proceedings in accordance with the opinion of this Honorable Court.

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Of Counsel

A copy of the foregoing Motion has been delivered to Julian B. Mastin, First National Bank Building, Dallas, Texas, and to W. E. Allen, First National Bank Building, Fort Worth, Texas, attorneys for respondent.

